

INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE STATE OF ARIZONA
AND
TOWN OF KEARNY

THIS AGREEMENT is entered into February 24, 2003, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, DEPARTMENT OF TRANSPORTATION, acting by and through its TRANSPORTATION PLANNING DIVISION (the "State") and the TOWN OF KEARNY acting by and through its MAYOR and TOWN COUNCIL (the "Town")

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-6993(g) to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State

2. The Town is empowered by Arizona Revised Statutes Section 48-572 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the Town

3. The State has approved the exchange of \$52,500.00 in Highway User Revenue Funds (HURF) to the Town in FY2002 for design of improvements to Tilbury Drive, and such funds will be repaid to the State by withholding from the Central Arizona Association of Governments (CAAG) federal funds and the obligation authority for a total of federal funds in the amount of \$64,079.00, herein referred to as the "Design Project"

4. The State has approved the exchange of \$297,500.00 in Highway User Revenue Funds (HURF) to the Town in FY2002 for the construction of improvements to Tilbury Drive and such funds will be repaid to the State by withholding from the CAAG federal funds and the obligation authority for a total of federal funds in the amount of \$363,113.00, herein referred to as the "Construction Project" and collectively the "Project"

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows

NO. 25828
Filed with the Secretary of State
Date Filed: 02/24/03
Janice K. Brewer
Secretary of State
By: Vicky D. Greenwald

II. SCOPE OF WORK

1 The Town will:

a Provide for the design plans, specifications and such other documents and services for construction bidding and construction of the Project

b Call for bids and award one or more design contract(s) for the Project Administer same and make all payments to the consultant(s) Comply with all applicable State laws, rules and regulations

c Upon award of the Design Project contract, invoice the State for 30% of the estimated design costs. Provide the State suitable documentation of design together with all invoices

d Invoice for the thirty percent of the Design Project costs at each 30% and 60% completion stage.

e Invoice the State for the remaining ten percent of the Design Project costs, upon 100% completion stage and upon review of the Design Project by the Town, the CAAG, and the State representatives

f Call for bids and award one or more construction contracts for the Construction Project Administer same and make all payments to the contractor(s)

g Upon award of the Construction Project contract, invoice the State for the estimated thirty percent of the Construction Project costs Provide to the State suitable documentation, together with all invoices

h Invoice for thirty percent of the Construction Project costs, at the 30% and 60% Construction Project completion stages

i Invoice the State for the remaining ten percent of the of the Construction Project costs, upon 100% completion stage and review by the Town, the CAAG, and the State representatives

j Be responsible for any consultant or contractor claims for extra compensation due to delays or for whatever reason attributable to the Town

k Upon completion, approve and accept the Project as complete and provide maintenance to the Project

2 The State will:

a Within 30 days after receipt and approval of an invoice, advance the Town HURF funds in the appropriate Fiscal Year and in accordance with paragraphs II 1c , 1d , 1e ,1g , 1h, and 1i, above, for the design and construction of the Project

b In FY 2002, withhold from CAAG federal funds and the obligation authority of federal funds in the total amount of \$64,079 for design

c In FY 2002, withhold from CAAG federal funds and the obligation authority of federal funds in the total amount of \$363,113.00 for construction

III. MISCELLANEOUS PROVISIONS

1 The State assumes no liability under this agreement. The Town assumes full responsibility for the acquisition of right-of-way, right-of-way plans, project design, plans and specifications, reports, construction and the engineering in connection therewith, cost over-runs and claims. It is agreed that the State's participation is confined solely to advancing highway user revenue funds; that any damages arising from carrying out, in any respect, the terms of this agreement or any modification thereof, shall be solely the liability of the Town and that the Town hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or nonperformance of any provisions of this agreement by the State, any of its departments, agencies, officers and employees, the Town, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, and court costs, expenses of litigation or attorneys' fees.

2 This agreement shall remain in force and effect until completion of said project, provided, however, that this agreement, except any provisions herein for maintenance, which shall be perpetual, unless assumed by another governmental entity, may be canceled at any time prior to the award of a construction contract, upon thirty (30) days written notice to the other party.

3 This agreement shall become effective upon filing with the Secretary of State.

4 This agreement may be canceled in accordance with Arizona Revised Statutes Section 38-511.

5 The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

6 In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

7 All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows.

Arizona Department of Transportation
Joint Project Administration
205 South 17 Avenue, Mail Drop 616E
Phoenix, AZ 85007

Town of Kearny
Town Manager
Box 639
Kearny, AZ 85237

8 Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written

TOWN OF KEARNY, ARIZONA

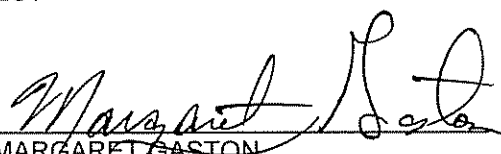
STATE OF ARIZONA

Department of Transportation

By 
DEBRA SOMMERS
Mayor

By 
DALE BUSKIRK, Acting Division Director
Transportation Planning Division

ATTEST

By 
MARGARET GASTON
Town Clerk

RESOLUTION NO. 02-500

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF KEARNY, ARIZONA, AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF ARIZONA TO IMPLEMENT A HURF EXCHANGE PROGRAM FOR TILBURY DRIVE CONSTRUCTION.

WHEREAS, The Town of Kearny is empowered by Arizona Revised Statutes to enter into an intergovernmental agreement, and

WHEREAS, The Arizona Department of Transportation has established the HURF Exchange Program to finance road improvements, and

WHEREAS, The Town of Kearny plans a street improvement project on Tilbury Drive.

NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE TOWN COUNCIL, OF THE TOWN OF KEARNY, ARIZONA:

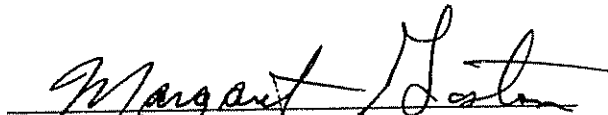
Section 1: The Mayor and Town Manager acting on behalf of the Town of Kearny are hereby authorized to negotiate, enter into, execute and deliver the intergovernmental agreement with the Arizona Department of Transportation implementing the HURF Exchange Program for the Tilbury Drive project.

Section 2: The resolution shall take effect immediately upon its adoption and approval.


PASSED AND ADOPTED BY THE Mayor and Town Council of the Town of Kearny, Arizona, this 12th day of November, 2002.


Mayor

ATTEST:

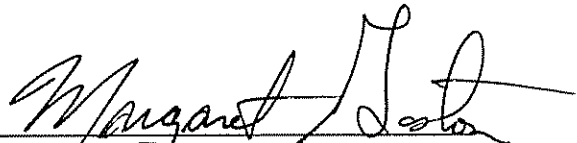

Town Clerk, Margaret Gaston

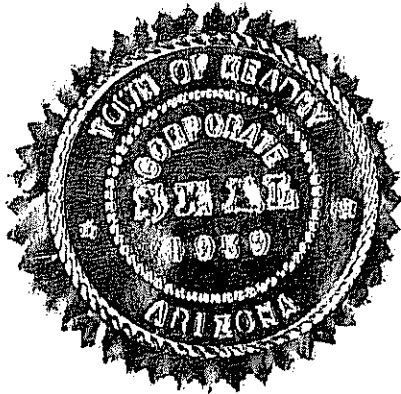
APPROVED AS TO FORM:


Town Attorney, Steve Cooper

I, the undersigned, Margaret Gaston, being the duly appointed and qualified Town Clerk of the Town of Kearny, Arizona, certify that the foregoing Resolution No. 02- 500 is a true, correct and accurate copy of Resolution No. 02-500, passed and adopted at a regular meeting of the Kearny Town Council, held on November 12, 2002, at which a quorum was present and voted in favor of said Resolution.

Given under my hand and seal this 27th day of January 2003.


Margaret Gaston, Town Clerk



APPROVAL OF THE KEARNY TOWN ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION and the TOWN OF KEARNY and declare this agreement to be in proper form and within the powers and authority granted to the Town under the laws of the State of Arizona.

DATED this 13th day of JANUARY, 2002³

Town Attorney Stephen R. Coope



OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

TERRY GODDARD
ATTORNEY GENERAL

CIVIL DIVISION
TRANSPORTATION SECTION
WRITER'S DIRECT LINE: 602.542.8855

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR02-2124TRN (JPA 02-166), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED February 12, 2003.

TERRY GODDARD
Attorney General

A handwritten signature in cursive script, reading "Susan E. Davis".

SUSAN E. DAVIS
Assistant Attorney General
Transportation Section